

<p>DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101</p> <hr/> <p>THE PEOPLE OF THE STATE OF COLORADO Plaintiff,</p> <p>v.</p> <p>BARRY LEE MORPHEW, Defendant.</p>	<p>DATE FILED April 13, 2026 11:46 PM</p> <p>▲ COURT USE ONLY ▲</p>
<p>JANE FISHER-BYRIALSEN, #49133 FISHER &amp; BYRIALSEN, PLLC 4600 S. Syracuse Street, 9<sup>th</sup> Floor Denver, CO 80237 (202)256-5664 <a href="mailto:Jane@fblaw.org">Jane@fblaw.org</a></p> <p>DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 <a href="mailto:david@rklawpc.com">david@rklawpc.com</a></p>	<p>Case Number: 25 CR 128</p>
<p align="center"><b>[D-039] MOTION TO EXCLUDE ANY WITNESS’S COMMENTS OR BELIEFS THAT MR. MORPHEW LOOKED OR LOOKS GUILTY</b></p>	

Mr. Barry Morpew, by and through undersigned counsel, moves this Court for an Order prohibiting the prosecution from presenting any testimony, opinions, or statements from a witness similar to statements that amount to comments on veracity or credibility, including (as examples) he or she believed or believes that Mr. Morpew “looked guilty,” “looks guilty,” “looked untruthful,” or “looked suspicious” or “looked like he is hiding something.” As grounds, Mr. Morpew states:

1. It has long been settled that neither a lay nor an expert witness may comment on another witness's veracity or credibility. *People v. Penn*, 2016 CO 32, 36, 379 P.3d 298, 306; *Liggett v. People*, 135 P.3d 725, 731 (Colo. 2006); *People v. Eppens*, 979 P.2d 14, 17 (Colo. 1999). *See also Venalanzo v. People*, 2017 CO 9, 32, 388 P.3d 868, 877.

2. Because it would ostensibly be based upon specialized experiences, knowledge, or training, then the witness would be offering expert testimony. But no expert would be qualified to use their intuition as a lie detection tool. It would be improper as lay opinion testimony. CRE 701, CRE 702. *Venalonzo v. People, supra*.

3. When an expert witness indicates a belief in a particular version of the facts and/or makes conclusions reserved for the jury, such testimony is improper and can be reversible error. *See e.g., People v. Baker*, 2019 COA 165, 21, 487 P.3d 1194, 1201 (*Baker I*), *aff'd*, 2021 CO 29, 21, 485 P.3d 1100 (*Baker II*). In *Baker II*, the Colorado Supreme Court affirmed reversal of a securities fraud conviction because the expert “effectively weighed the evidence, made credibility determinations as to such evidence, and essentially told the jury what had occurred in this case, all of which were matters solely for the jury's determination. And in doing so, the Deputy Commissioner, for all intents and purposes, opined that Baker was guilty of the crimes charged....” *Baker II*, 2021 CO 29, 36, 485 P.3d 1100, 1108. Such testimony about dishonesty or credibility would invade the province of the jury. Credibility determinations are exclusively the province of the jury.

4. Powerful guidance can be seen in the Supreme Court’s analysis in *Howard-Walker v. People*, 2019 CO 69, 35, 443 P.3d 1007, 1013. There, in response to the prosecutor’s question, a detective testified that, based on his training and experience, he felt that Howard-Walker was not being forthcoming and not being truthful during the interview. The Court of Appeals determined that it was “improper to ask one witness to opine on the truthfulness of another” when the testimony is not “offered to provide context for the detective's interrogation tactics and investigative decisions.” *Howard-Walker v. People*, 2019 CO 69, 35, quoting *People v. Howard-Walker*, 2017 COA 81M, ¶¶ 79-80, 446 P.3d 843 (citing *Liggett v. People*, 135 P.3d 725, 733 (Colo. 2006) and *Davis v. People*, 2013 CO 57, 17, 310 P.3d 58, 62–63).

5. Mr. Morphew makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, RPC 3.8, CREs 401, 402, 403, 404, 608, 701, 702, 703, 801, 802, 901, and other applicable Rules of Evidence or Criminal Procedure. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, Mr. Barry Morpew, by and through undersigned counsel, moves this Court for an Order prohibiting the prosecution from presenting any testimony, opinions, or statements from a witness similar to statements that amount to comments on veracity or credibility, including (as examples) similar to statements that he or she believed or believes that Mr. Morpew “looked guilty,” “looks guilty,” “looked untruthful,” or “looked suspicious” or “looked like he is hiding something.”

Respectfully submitted this 13th day of April, 2026.

**FISHER & BYRIALSEN, PLLC**

/s/ Jane Fisher-Byrialsen  
Jane Fisher-Byrialsen, #49133

**RECHT KORNFELD, P.C.**

/s/ David Beller  
David Beller, #35767

#### **Certificate of Service**

I hereby certify that on April 13, 2026, I caused the foregoing to be filed with the Alamosa County District Court and a copy of the same to be served on the Alamosa County District Attorney’s office via CCE-File Service.

/s/ Abby Clement  
Paralegal at Fisher & Byrialsen PLLC